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9 Attorneys for Complainant

10 BEFORE THE  
11 CALIFORNIA BOARD OF ACCOUNTANCY  
12 DEPARTMENT OF CONSUMER AFFAIRS  
13 STATE OF CALIFORNIA

14 In the Matter of the Accusation Against:

Case No. AC-2006-28

15 KPMG LLP (In re: Tax Shelters)  
16 355 South Grand Avenue, Suite 2000  
17 Los Angeles, CA 90071  
18 CPA Partnership Certificate No. PAR 157,

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER

19 Respondent.

20 In the interest of a prompt settlement of this matter, consistent with the public interest and  
21 the responsibilities of the California Board of Accountancy of the Department of Consumer  
22 Affairs (the "Board"), the parties hereby agree to the following Stipulated Settlement and  
23 Disciplinary Order (the "Stipulated Settlement") which will be submitted to the Board for  
24 approval and adoption as the final disposition of the Accusation No. AC-2006-28 against the  
25 Partnership Registration of KPMG LLP in re: the tax shelter matters.

26 PARTIES AND JURISDICTION

27 1. Carol Sigmann, Complainant, is the Executive Officer of the Board. She brought this  
28 Accusation solely in her official capacity and is represented in this matter by Edmund G. Brown,  
Jr., Attorney General of the State of California, by Jeanne C. Werner, Deputy Attorney General.

2. Respondent KPMG LLP<sup>1</sup> is acting, in this proceeding, through Laura F. Mullen,  
California CPA Certificate 42768, who is KPMG's Western Regional Professional Practice

1. KPMG LLP is also referred to herein as KPMG or Respondent.

1 Partner. Ms. Mullen has been designated to act on behalf of KPMG to enter into this agreement  
2 on behalf of the firm.<sup>2</sup> KPMG LLP is represented in this proceeding by Joseph I. Loonan,  
3 General Counsel, KPMG LLP's Office of General Counsel.

4 3. The Accusation was filed before the Board and is currently pending against  
5 Respondent KPMG. The Accusation and all other statutorily required documents were properly  
6 served on all respondents, and a timely Notice of Defense was filed on behalf of Respondent  
7 KPMG. A copy of the Accusation is attached as Exhibit A and incorporated herein by reference.

8 4. The parties stipulate that KPMG's license history is accurately set forth in paragraphs  
9 2 and 3 of the attached Accusation and that the Board has jurisdiction in this matter.<sup>3</sup>

#### 10 WAIVERS & CONTINGENCY

11 5. Acting as KPMG's representative as set forth in paragraph 2 above, Ms. Mullen  
12 understands and has carefully read, and has fully discussed with counsel, the allegations  
13 pertaining to KPMG in the Board's Accusation. She has also carefully read and fully discussed  
14 this Stipulated Settlement with counsel, and understands the provisions and effects of this  
15 Stipulated Settlement and Disciplinary Order. She is fully aware of KPMG's legal rights in this  
16 matter, including the right to a hearing on the charges and allegations in the Accusation; the right  
17 to be represented by counsel at its own expense; the right to confront and cross-examine the  
18 witnesses against the partnership; the right to present evidence and to testify on its own behalf;  
19 the right to the issuance of subpoenas to compel the attendance of witnesses and the production  
20 of documents; the right to reconsideration and judicial review of an adverse decision; and all  
21 other rights accorded by the California Administrative Procedure Act and other applicable laws.  
22 Ms. Mullen, on behalf of KPMG voluntarily, knowingly, and intelligently waives and gives up  
23 each and every one of these rights.

24  
25  
26 2. Ms. Mullen is not otherwise involved in these proceedings and was not involved in the  
tax shelter activity which is the subject of this Accusation.

27 3. The terms "partnership registration" and "license" refer to the authority granted to  
28 KPMG by the Board to practice accountancy in California, and the terms are used  
interchangeably herein.

1           6. It is understood that, in authorizing Ms. Mullen to sign this stipulation on behalf of  
2 KPMG rather than further contesting the Accusation, KPMG is consenting to the adoption of this  
3 Stipulated Settlement as the Board's Decision, enabling the Board to issue the following order  
4 without further legal process. Respondent KPMG represents that no tender, offer, promise, threat  
5 or inducement of any kind whatsoever have been made by the Board or any member, officer,  
6 agent or representative thereof in consideration of this offer or otherwise to induce it to so  
7 consent.

8           7. This stipulation shall be subject to approval by the Board. Respondent understands  
9 and agrees that counsel for Complainant and the staff of the Board may communicate directly  
10 with the Board regarding this Stipulated Settlement, without notice to or participation by  
11 Respondent or its counsel. By signing the stipulation, Respondent's representative understands  
12 and agrees that the firm may not withdraw its agreement or seek to rescind the stipulation prior to  
13 the time the Board considers and acts upon it.

14           8. If the Board does not adopt this stipulation as its Decision and Order, the Stipulated  
15 Settlement shall be withdrawn. It shall be of no force or effect, except for this paragraph. It shall  
16 have no evidentiary value, shall be inadmissible in any legal action between the parties, and shall  
17 not be relied upon or introduced in any disciplinary, or other, action or proceeding by either party  
18 hereto. In the event that the Stipulated Settlement is not adopted, nothing recited herein shall be  
19 construed as a waiver of respondent's right to a hearing on the truth of the Accusation's charges,  
20 or a waiver of any other right, including those rights expressly waived in the Stipulated  
21 Settlement. Communications pursuant to this paragraph, and consideration of this matter, shall  
22 not disqualify the Board or other persons from future participation in this or any other matter  
23 affecting Respondent. Respondent agrees that should the Board reject the Stipulated Settlement  
24 and if this case proceeds to hearing, Respondent will assert no claim that the Board was  
25 prejudiced by its review and discussion of the Stipulated Settlement or of any records related  
26 hereto. In the event that the Stipulated Settlement is not adopted, Respondent is not precluded  
27 from filing a Special Notice of Defense within fifteen days of its counsel being notified in writing  
28 that the Stipulated Settlement was not adopted.

1           ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES

2           9. The parties acknowledge that the principal basis for the Accusation's alleged  
3 violations of the Accountancy Act is the Deferred Prosecution Agreement ("DPA") referenced in  
4 paragraphs 50 through 65 of the Accusation. As relevant herein, KPMG therein accepted and  
5 admitted the matters set forth in detail in the Statement of Facts attached to the DPA, which is  
6 incorporated in its entirety in the Accusation (Exhibit A to Accusation, appended hereto). In  
7 part, KPMG admitted that, "[f]rom 1996 through 2002, KPMG, through its tax partners, assisted  
8 high net worth United States citizens to evade United States individual income taxes on billions  
9 of dollars in capital gain and ordinary income by developing, promoting, and implementing  
10 unregistered and fraudulent tax shelters. A number of KPMG tax partners engaged in conduct  
11 that was unlawful and fraudulent...". (Accusation, Paragraph 52, quoting from Statement of  
12 Facts.)

13           10. Respondent KPMG admits the matters set forth in the Statement of Facts, Exhibit A  
14 to the Accusation, and that former KPMG tax personnel who were partners or employees  
15 licensed in, or doing business, in California, were among those who were developing, promoting,  
16 and implementing KPMG's tax shelter program. The parties agree that the Statement of Facts is  
17 the factual basis for the imposition of discipline in this matter. Respondent KPMG agrees that its  
18 Partnership Registration is subject to discipline under Business and Professions Code Sections  
19 5100, 5101 and 125 as set forth in the Accusation, and agrees to be bound by the Board's  
20 imposition of discipline as set forth in the disciplinary order below.

21           11. The parties acknowledge that KPMG has been in compliance with the terms of the  
22 DPA (set forth in paragraph 53 of the Accusation), and that, upon the recommendation of the  
23 U. S. Attorney, and based upon KPMG's compliance with the terms of the DPA, the Information  
24 was dismissed in January 2007, as set forth in paragraph 55 of the Accusation.

25           12. Respondent further agrees not to take any action or make any public statement that  
26 creates, or tends to create, the impression that any of the matters set forth in the Stipulated  
27 Settlement, Order and Decision are without a factual basis. It is not the intent of the Board,  
28 however, to prevent Respondent's partners, employees, or former partners or employees from

1 testifying or responding truthfully in civil litigation, regulatory, or other matters, including where  
2 required to do so by any court of law or regulatory body.

3 13. The parties understand and agree that facsimile copies of this Stipulated Settlement,  
4 including facsimile signatures thereto, shall have the same force and effect as the originals.

5 14. The Board, in accepting this stipulation, is foregoing its right to institute further  
6 disciplinary proceedings, including filing charges in addition to the charges contained in the  
7 Accusation, against KPMG LLP's partnership license based upon conduct arising out of its  
8 involvement, for the period covered in the Accusation, in the tax shelters known as FLIP, OPIS,  
9 BLIPS, and SOS, as well as other tax shelters covered by the federal government's investigation  
10 into the KPMG sale of tax shelters. However, the Board expressly reserves its right to initiate or  
11 continue investigations and administrative proceedings related to the conduct of other Board  
12 licensees who may have been involved in the acts or omissions underlying the DPA as well as  
13 any other violations of the Accountancy Act which may have occurred by Board licensee(s) in  
14 the tax shelter matters. In those circumstances, Respondent voluntarily agrees to fully cooperate  
15 with, and, upon reasonable notice, make its partners and employees available to the Board and its  
16 designees, without the necessity of a subpoena, in any investigation of other Board licensees  
17 regarding KPMG tax shelters, including, but not limited to, the providing of truthful interviews,  
18 statements, affidavits, declarations, and any other documents or other types of information  
19 requested, consistent with the requirements of confidentiality and law. Respondent, if called to  
20 do so, shall cooperate with the Board and shall, upon reasonable notice, furnish representatives to  
21 testify at any subsequent administrative or civil proceeding if asked to do so by the Board.  
22 Finally, this provision shall not have the effect of limiting in any way the Board's monitoring of  
23 Respondent's compliance with the terms of this order.

24 15. It is acknowledged by the Complainant that Respondent KPMG LLP assumed  
25 responsibility for its conduct at an early stage in the proceedings. Complainant acknowledges  
26 Respondent's expressed intention to move forward in a cooperative manner with the Board, as it  
27 did with the federal authorities. Complainant acknowledges that Respondent KPMG LLP has  
28 been cooperative in these proceedings. The parties stipulate that the Board's Order may become

1 effective immediately upon adoption.

2 16. The Stipulation is founded upon Respondent's admission in paragraph 10, as well as  
3 upon Respondent's representations concerning its firm-wide remedial efforts undertaken even  
4 before the Deferred Prosecution Agreement was entered. Respondent has submitted a letter  
5 making representations regarding its undertakings, which letter is offered by Respondent as  
6 evidence of its rehabilitation, and also offered in mitigation of penalty, to be considered along  
7 with the circumstances pled in Accusation No. AC-2006-28. Respondent's letter is incorporated  
8 herein as though fully set forth, and a true and correct copy of Respondent's letter is attached  
9 hereto as Exhibit B ("KPMG LLP Letter").

10 IN CONSIDERATION OF THE FOREGOING admissions and stipulations, the parties  
11 agree that the Board may, without further notice or formal proceeding, issue and enter the  
12 following Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Partnership Registration Number No. 157, issued to  
15 Respondent KPMG LLP, is suspended for a period of a year (365 days). However, the  
16 suspension is stayed and Respondent's license is placed on probation for three (3) years, subject  
17 to the following terms and conditions.

18 1. Comply With Probation. Respondent shall fully comply with the terms and  
19 conditions of the probation imposed by the Board and shall cooperate fully with representatives  
20 of the Board<sup>4</sup> in its monitoring and investigation of the Respondent's compliance with these  
21 probationary terms and conditions. Respondent shall designate a contact person or persons,  
22 including at a minimum a Board licensee with a current, active license in California and whose  
23 primary office is in California, who shall represent Respondent during the period of probation.  
24 Failure to complete the probationary requirements shall automatically extend the period of  
25 probation and the Board shall have continuing jurisdiction of this matter until the condition is

26  
27 4. The term Board as used hereinafter in these probationary conditions may refer to the  
28 Board or its designees, including the Complainant, the Chief of Enforcement, other Board staff,  
Deputy Attorneys General, consultants, etc. as designated by the Board, the Complainant,  
and/or the Board's Chief of Enforcement.

1 satisfied.

2           2. Administrative Sanction. Respondent shall pay \$1 million as a monetary sanction,  
3 which funds may be directed to enforcement and education efforts furthering the mission of the  
4 Board and the Department of Consumer Affairs.

5           3. Cost Reimbursement. Respondent shall reimburse the Board its costs of investigating  
6 and prosecuting this and related tax shelter cases pursuant to Business and Professions Code  
7 section 5107. This provision does not create a right by other parties to claim reimbursement or an  
8 offset for Board costs under this agreement.

9           4. Submit Written Reports and Personal Appearances. Respondent shall submit such  
10 written reports, declarations, and verification of actions to the Board, under penalty of perjury, as  
11 are required relative to Respondent's compliance with all the terms and conditions of probation.  
12 Respondent shall immediately execute all release of information forms as may be required by the  
13 Board or its representatives to confirm Respondent's compliance with the terms and conditions  
14 of probation. Respondent shall facilitate such contact with the Monitor and KPMG personnel as  
15 is deemed necessary by the Chief of Enforcement to monitor the terms of this probation.  
16 Respondent's representatives shall, during the period of probation, appear in person at  
17 interviews/meetings as directed by the Board or its designated representatives, provided such  
18 notification is accomplished in a timely manner. In lieu of a practice investigation, Respondent  
19 shall inform the Board's Chief of Enforcement in writing of the findings of the Monitor of a  
20 violation of the DPA, and any other relevant matters or developments in a timely manner.

21           5. Dissemination of the Stipulated Settlement. Within 30 days of the Board's adoption  
22 of the Stipulated Settlement and its filing as a public document at the Board's office, Respondent  
23 shall disseminate the Stipulated Settlement and Disciplinary Order to all KPMG professional  
24 personnel officed in California and shall confirm such dissemination in writing to the Board.

25           6. Cooperate with Board. Respondent will cooperate with Board investigations as  
26 provided in paragraph 14 above.

27           7. Obey All Laws. Respondent shall obey all federal, California, other  
28 states' and local laws, including those rules relating to the practice of public accountancy in

1 California.

2 8. Comply With Citations. Respondent shall comply with all final orders resulting from  
3 citations issued by the Board of Accountancy.

4 9. Violation of Probation. If Respondent violates probation in any respect, the Board,  
5 after giving Respondent notice and an opportunity to be heard, may revoke probation and carry  
6 out the disciplinary order that was stayed. Violation(s) of probation may result in the Board's  
7 charges being reinstated and/or additional charges being filed, in which event neither the waivers  
8 contained in this Stipulated Settlement (under "Waivers and Contingency") nor the limitations on  
9 the Board shall have any effect as to the "KPMG tax shelter" matters, that is, the Board may  
10 reinstate, augment, or supplement the charges in the Accusation, and KPMG will be entitled to  
11 fully contest any such charges at an administrative hearing. If an accusation or a petition to  
12 revoke probation is filed against Respondent during probation, the Board shall have continuing  
13 jurisdiction until the matter is final, and the period of probation shall be extended until the matter  
14 is final.

15 10. Completion of Probation. Probation will be automatically extended until the  
16 conditions set forth herein are completed to the satisfaction of the Board or its designee. Upon  
17 successful completion of probation, Respondent's license will be fully restored.

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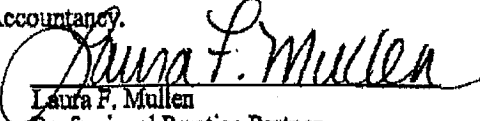
#### 23 ACCEPTANCE

24 On behalf of KPMG LLP, and as its designated agent for purposes of this action and  
25 stipulation, I have carefully read the above Stipulated Settlement and Disciplinary Order and  
26 have fully discussed it as necessary within KPMG LLP and with Joseph Loonan. I understand  
27 the stipulation and the effect it will have on Partnership Registration Number 157. On behalf of  
28 KPMG LLP, I enter into this Stipulated Settlement and Disciplinary Order voluntarily,



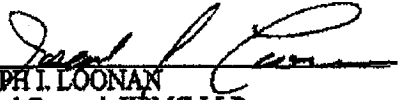
1 knowingly, and intelligently, and agree that the partnership is thereby bound by the Decision and  
2 Order of the California Board of Accountancy.

3 DATED: January 2, 2008.

  
Laura F. Mullen  
Professional Practice Partner  
KPMG - Western Region  
CPA Certificate 42768  
for KPMG LLP, Respondent

7 I have read, and have fully discussed with KPMG management, the terms and conditions  
8 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve  
9 its form and content.

10 DATED: January 9, 2008.


  
JOSEPH I. LOONAN  
General Counsel, KPMG LLP  
Attorney for Respondent

13 ENDORSEMENT

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
15 submitted for consideration by the Board of Accountancy of the Department of Consumer  
16 Affairs.

17 DATED: January 9, 2008.

18 EDMUND G. BROWN, JR., Attorney General  
19 of the State of California

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21 JEANNE C. WERNER  
22 Deputy Attorneys General  
23 Attorneys for Complainant  
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BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2006-28

KPMG LLP (In re: Tax Shelters)  
355 South Grand Avenue, Suite 2000  
Los Angeles, CA 90071  
CPA Partnership Certificate No. PAR 157,

Respondent.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Accountancy, Department of Consumer Affairs, as its Decision and Order in re: the Partnership Certificate Number 157 of KPMG LLP in regard to the tax shelter matters.

This Decision shall become effective upon adoption. It is so ORDERED on  
January 18, 2008.

  
Donald A. Driftmier  
President  
FOR THE BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS